

STATE OF CALIFORNIA  
WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20686

Application 29747 of David W. Heide and Betty L. Heide

2060 Pope Canyon Road, St. Helena, CA 94574

filed on May 21, 1990, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

<u>(1) Burton Creek</u>	<u>Maxwell Creek thence</u>
<u></u>	<u>Pope Creek thence</u>
<u></u>	<u>Lake Berryessa thence</u>
<u></u>	<u>Putah Creek</u>
<u>(3) Unnamed Stream</u>	<u>Burton Creek</u>
<u></u>	<u></u>

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section *	Township	Range	Base and Meridian
(1) DIVERSION TO OFFSTREAM STORAGE NORTH 6,500 FEET AND EAST 700 FEET FROM THE SW CORNER OF FRACTIONAL SECTION 26	SW $\frac{1}{4}$ OF SW $\frac{1}{4}$	23	9N	5W	MD
(2) OFFSTREAM STORAGE WITHIN	W $\frac{1}{2}$ OF SW $\frac{1}{4}$	23	9N	5W	MD
(3) STORAGE AND REDIVERSION NORTH 8,600 FEET AND EAST 1,800 FEET FROM THE SW CORNER OF FRACTIONAL SECTION 26	SE $\frac{1}{4}$ OF NW $\frac{1}{4}$	23	9N	5W	MD

County of Napa \* fractional

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acre
SEE ADDENDUM						

The place of use is shown on map on file with the State Water Resources Control Board.

## ADDENDUM

**Application 29747**

\* fractional

[illegible]

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of 98 acre-feet per annum to be collected from November 1 of each year to March 31 of the succeeding year as follows: 49 acre-feet per annum in offstream Reservoir No. 2, and 49 acre-feet per annum in Reservoir No 3.

(0000005)

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

(0000051)

The maximum rate of diversion to offstream storage shall not exceed 2.0 cubic feet per second.

(000005J)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

7. Complete application of the water to the authorized use shall be made by December 31, 1997.

(0000009)

8. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until a license is issued.

(0000010)

9. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

10. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

11. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

12. The State Water Resources Control Board reserves jurisdiction to impose conditions to conform this permit to Board policy on use of water for frost protection. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

(0000020)

13. Permittee shall comply with the following provisions which are derived from the agreement between permittee and Department of Fish and Game executed on September 23, 1991 and filed with the State Water Resources Control Board:

- (1) Permittee shall implement the revegetation plan within one year from the date of issuance of this permit.
- (2) Permittee shall provide for a 75% survival rate of all plants for three years after implementation of the revegetation plan.
- (3) Permittee shall provide the Department of Fish and Game a status report on the revegetation three years after completion of planting. Permittee shall replace plants as needed to assure the 75% survival rate.

Inclusion in this permit of certain provisions of the referenced agreement shall not be construed as disapproval of other provisions of the agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit.

(0000024)

14. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam for Reservoir No. 3 as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the Board, in order that water entering the reservoir from its watershed and which is not authorized for appropriation under this permit can be released. Permittee shall submit plans and specifications of the outlet pipe or alternative facility to the Chief of the Division of Water Rights for approval within six months of the date upon which the Board issues notice that an outlet is required. Permittee shall furnish evidence which substantiates that the outlet pipe or alternative facility has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

(0050043)

15. Permittee shall install and maintain devices satisfactory to the State Water Resources Control Board to measure the rate and quantity of water diverted into the reservoirs from Burton Creek.

(0060046)

16. Permittee shall install and properly maintain in Reservoir No. 3 a staff gage, satisfactory to the State Water Resources Control Board, for the purpose of determining water levels in the reservoir.

Permittee shall record the staff gage readings on or about November 1 of each year. Such readings shall be supplied to the State Water Resources Control Board with the next progress report submitted to the Board by permittee.

(0070047)

(0100047)

17. For the protection of fish and wildlife, permittee shall during the period:

- (a) from November 1 through November 30 bypass a minimum of 0.5 cubic foot per second,
- (b) from December 1 through February 28 bypass a minimum of 4.0 cubic feet per second,
- (c) from March 1 through March 31 bypass a minimum of 1.0 cubic foot per second.

The total streamflow shall be bypassed whenever it is less than the designated amount.

(0140060)

18. No water shall be diverted under this permit until permittee has installed a device on Burton Creek, satisfactory to the State Water Resources Control Board, which is capable of measuring the bypass flows required by the conditions of this permit. Said measuring device shall be properly maintained.

(0060062)

19. Permittee is hereby put on notice that there may be years when storage and diversion of water to offstream storage under this permit will not be within the reservation of water established for the watershed upstream from Lake Berryessa in State Water Resources Control Board Decision 869. During such years, unless replacement water is provided on an exchange basis, permittee:

- (1) shall release water collected to storage under this permit, from the watershed of Reservoir No. 3, during the preceding collection season at the maximum practical rate to flow into Lake Berryessa and
- (2) shall not make any diversion to offstream storage in Reservoirs No. 2 and 3 during the portion of such years that, in the absence of permittee's diversion, hydraulic continuity would exist between the diversion point and Lake Berryessa, and at such times, shall allow all streamflow at the diversion works to pass undiminished to the downstream channel.

Nothing in this condition, however, shall preclude permittee from diverting water under any prior right.

(0220088)  
(0230088)

20. No construction shall be commenced and no water shall be used under this permit in the erosion hazard area, identified in the Initial Study prepared for Application 29747, until all necessary County approvals have been obtained. A copy of the County's approval, and any erosion control or vegetation preservation plans shall be forwarded to the State Water Resources Control Board. (0450500)

21. For the protection of the Pogogyne douglasii parviflora (Douglas' bearded lady) population as identified in the report of the rare plant survey made by Mr. Joe Callizo, dated June 30, 1991:

- (a) Permittee shall not impact the species by spraying herbicides within 100 feet of the plant population between March 1 and July 1 of any year.
- (b) Permittee shall not allow any development within 25 feet of any of the plant distribution.
- (c) Permittee shall permanently identify the plant population by surrounding the site with flagged construction stakes to be spaced and maintained at a maximum distance of 20 feet apart.

Permittee shall allow representatives from the Napa Valley Chapter of the California Native Plant Society, reasonable access upon notification of the permittee or the permittee's agent for the purpose of verifying these conditions of the permit. (0480500)

22. For the protection of riparian habitat, permittee shall establish a setback of 35 feet along Burton Creek. The stream setback shall be measured from the top of the bank on both sides of the stream. No activity shall occur within the setback area including but not limited to: grading, roads, fencing, storage areas, and vineyard, with the exception of access roads needed to cross the stream. (0400500)

23. The two archaeological sites referred to as the Target Range Site and the Gas Pump Site in the cultural resources report titled An Archaeological Study of the Heide Project Location, Pope Valley, Napa County, California shall not be impacted by any developments related to or resulting from the proposed water diversion, storage or use. Such developments would include all surface and subsurface disturbances related to construction of the dams, reservoirs basins, pipelines and project activities in the place of use.

The archaeological sites shall be clearly delineated by staking and flagging the areas as identified on the archaeological site maps in order to prevent inadvertent impacts during the above stated activities. The stakes marking the sites shall be at least 3 feet in height and placed no more than at 15-foot intervals.

Future development at these sites may be allowed following the completion of an appropriate mitigation program approved by a State Water Resources Control Board archaeologist. If any previously undiscovered cultural resources are found during the course of the project activities authorized by this permit, all work shall be halted until a qualified archaeologist evaluates the site, notifies a State Water Resources Control Board archeologist of the find and appropriate mitigation measures are implemented. (0380500)

24. This permit is specifically subject to the prior rights of St. Supery Vineyards and Winery under appropriations issued pursuant to Applications 23834, 27852 and 27853. (000T001)

**This permit is issued and permittee takes it subject to the following provisions of the Water Code:**

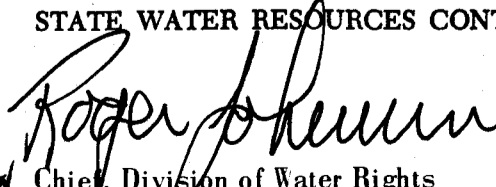
Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: **SEPTEMBER 21 1993**

STATE WATER RESOURCES CONTROL BOARD

  
for Chief, Division of Water Rights